

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

YU LIN,

Plaintiff,

V.

UNIVERSITY OF NEBRASKA,

Defendant.

4:05CV3153

ORDER

This matter is before the court on plaintiff's Appeal From Magistrate Judge's Order (Filing No. 105), and defendant's Brief in Opposition to Appeal From Magistrate Judge's Order (Filing No. 106).

Pursuant to Fed. R. Civ. P. 54(b), a decision is not a final and appealable order until after entry of judgment adjudicating all the claims and rights of the parties. Because filing No. 104 is not a final appealable order, and the court will not certify the order for interlocutory appeal, the court will construe plaintiff's appeal as a motion for reconsideration.

In her motion plaintiff argues that the court erred in granting defendant's motion for summary judgment on her claim under Title VII because the court's March 31, 2006 Order and its May 17, 2006 Order were "self-contradicting", the plaintiff was actually an employee of the University, and she suffered an adverse employment action.

In its March 31, 2006 Order the court did not make a final decision on the issue of whether plaintiff established a prima facie case of discrimination on her Title VII claim alleging that defendant discriminated against her by dismissing her application for a teaching assistantship for the Summer of 2004 and Fall of 2004. Nevertheless, plaintiff

appears to be arguing that because the court requested additional information on one aspect of that claim it could not continue to consider all the facts and circumstances surrounding whether plaintiff had established a prima facie case of discrimination, that is simply not accurate. The court's request for additional briefing on an issue does not preclude the court from continuing to review and assess whether plaintiff had established all of the elements of the prima facie case. Indeed, no decision is final for purposes of appeal until the entry of a final judgment. After reviewing the record and the parties submissions the court upholds the decision in its May 17, 2006 Order.

IT IS ORDERED:

The plaintiff's Appeal from a Magistrate Judge's Order (Filing No. 105) is denied.

DATED this 5th day of June, 2006.

BY THE COURT:

s/ F.A. Gossett
United States Magistrate Judge